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Applicants: George J. Christ et al.

Serial No: 10/579,705

Filed: October 31, 2008

Reply to November 5, 2010 Office Action

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#### REMARKS

Claims 1, 7, 9, 11-12, 15, 19-23, 25, 27-33, 35-36, 38, and 42-44 were pending in the subject application. Claims 12, 15, 23, 31, 32, 38 and 42 are withdrawn from consideration by the Examiner as directed to non-elected species. By this Amendment, Claims 9, 11, 12, 15, 19, 21, 22, 23, 27, 28, 31, 32, 36, 38 and 42 have been canceled without prejudice or disclaimer, Claims 1, 20, 29, 30, 33 and 35 have been amended, and new Claims 45-46 have been added. Applicants maintain that the amendments to the claims do not raise an issue of new matter. Support for the amendments to Claims 1 and 35 can be found at least in paragraph [0018] on page 7 and paragraph [0061] on page 22 of the application as originally filed and in canceled Claim 21. Additional support for the amendment to Claim 35 for maxi-K can be found in canceled Claim 36. Support for new Claims 45 and 46 can be found at least in paragraph [0061] on page 22 of the application as originally filed. Support for the other claim amendments can be found at least in the previous version of the claims. Accordingly, entry of the amendments is respectfully requested.

#### Objection to Claim 9

The objection to Claim 9 is rendered moot by the cancelation of the claim.

#### Rejections under 35 U.S.C. §103(a)

Claims 1, 7, 9, 11, 19-20, 22, 25, 27-30, 33, 35-36 and 43-44 are rejected as being unpatentable over Geliebter et al. (U.S. Patent No. 6,150,338) in view of Leiden et al. (U.S. Patent No. 6,436,907).

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Claim 21 is rejected as being unpatentable over Geliebter et al. (U.S. Patent No. 6,150,338) in view of in view of Leiden et al. (U.S. Patent No. 6,436,907) and pEYFP Vector Information from Clontech.

The rejections of Claims 9, 11, 19, 22, 27, 28, 36 and 42 are rendered moot by the cancelation of these claims.

The Examiner commented on pages 9-10 of the Office Action that the claims were previously not limited to the embodiment that applicants have demonstrated produces advantageous results. In reply, independent Claims 1 and 35 have been amended to recite the characteristics of the plasmid *SMAA-hSlo* used in both the present application and in the previously discussed publication by Melman et al. (2008) (see, "Plasmid constructs" on page 368).

Applicants respectfully maintain that the cited references do not render obvious the presently claimed embodiment, particularly in view of the advantageous results obtained with this embodiment as previously discussed in the reply dated August 17, 2010.

Accordingly, reconsideration and withdrawal of these rejections are respectfully requested.

#### Obviousness-type Double Patenting Rejections

Claims 1, 7, 9, 11, 19-22, 25, 27-30, 33, 35-36 and 43-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over either claims 1-3 of parent U.S. Patent No. 7,030,096 or claims 1-9 of U.S. Patent No. 6,150,338, in view of Leiden et al. (U.S. Patent No. 6,436,907) and pEYFP Vector Information from Clontech.

Reconsideration and withdrawal of this rejection is respectfully requested in view of the remarks made herein above regarding the rejections under 35 U.S.C. §103(a).

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### CONCLUSIONS

In view of the amendments and remarks made hereinabove, reconsideration and withdrawal of the objection and rejections in the November 5, 2010 Final Office Action and passage of the pending claims to allowance are respectfully requested. If there is any minor matter preventing the allowance of the subject application, the Examiner is requested to telephone the undersigned attorney.

The Patent Office is authorized to withdraw the \$405.00 fee for a small entity for filing a Request for Continued Examination (RCE) from Deposit Account No. 01-1785. No other fee is deemed necessary in connection with the filing of this Amendment and RCE. However, if any other fee is required to preserve the pendency of the subject application, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 01-1785. Overpayments may also be credited to Deposit Account No. 01-1785.

Respectfully submitted,

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